



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**NOV 19 2012**

Fred Wertheimer  
Donald J. Simon  
Democracy 21  
2000 Massachusetts Avenue, N.W.  
Washington, D.C. 20036

RE: MUR 6514  
Make Us Great Again, Inc. and  
Paul Kilgore in his official capacity  
as Treasurer  
Rickperry.org and Salvatore Purpura  
in his official capacity as Treasurer

Dear Messrs Wertheimer and Simon:

This is in reference to the complaint you filed with the Federal Election Commission on December 15, 2011, concerning Make Us Great Again, Inc. and Paul Kilgore in his official capacity as Treasurer and Rickperry.org and Salvatore Purpura in his official capacity as Treasurer. Based on that complaint and information provided by the respondents, on November 8, 2012, the Commission determined to dismiss this matter and closed the file. The Factual and Legal Analyses, which more fully explain the basis for the Commission's decision, are enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

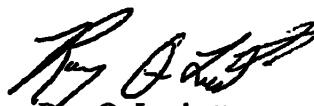
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Messrs. Wertheimer and Simon  
MUR 6514  
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Anthony Herman  
General Counsel



BY: Roy Q. Lockett  
Acting Assistant General Counsel

Enclosures  
Factual and Legal Analyses

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:**     **Make Us Great Again, Inc. and**  
                          **Paul Kilgore in his official capacity**  
                          **as Treasurer**

**MUR: 6514**

**I.     INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Campaign Legal Center and Democracy 21. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that Make Us Great Again, Inc. and Paul Kilgore in his official capacity as Treasurer ("MUGA"), an independent expenditure-only political committee, gave video footage to RickPerry.org, Inc. and Salvatore Purpura in his official capacity as Treasurer (the "Committee"), that the Committee used in a television commercial. The Committee is the principal campaign committee of former presidential candidate Rick Perry. Citing Advisory Op. 2010-11 (Commonsense Ten), the complaint asserts that such a contribution violates the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations because independent expenditure-only committees are prohibited from making contributions to candidates. The complaint also alleges that the contribution is excessive because the video footage likely cost more than \$2,500.<sup>1</sup>

**II.    FACTUAL AND LEGAL ANALYSIS**

**A.     Facts**

MUGA registered as an independent expenditure-only committee with the Commission on July 28, 2011. MUGA's purpose was to support and promote Governor Rick Perry's

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<sup>1</sup> The complaint does not allege that there was unlawful coordination between MUGA and the Committee, and based on the available facts, there is no record evidence to suggest that there was any coordination relating to the video footage at issue. *See* 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21.

1 candidacy for President. Jason Miller Aff. ¶ 2.<sup>2</sup> MUGA paid camera crews to shoot footage of  
2 Governor Perry at public events, which was used in certain MUGA ads, including the 31-second  
3 ad entitled "Conservative" at issue. Scott Rials Aff. ¶ 3.<sup>3</sup> *Id.* Jamestown Associates, Inc., a  
4 political consulting firm, obtained and created the footage for the MUGA ad at issue. Miller Aff.  
5 ¶¶ 1, 4. MUGA's ad appears to have been distributed in early November 2011. *See* Ben Smith,  
6 *MUGA's Great-Looking Ad*, POLITICO, Nov. 3, 2011; Miller Aff. ¶ 5.

7 The Committee incorporated less than 10 seconds of the MUGA footage from  
8 "Conservative" in its two-minute, 45-second-long ad entitled "Securing the American Dream  
9 (Marcus' [sic] Story)." The Committee's ad was distributed in late November 2011, around  
10 Thanksgiving. *See* Ben Smith, *Perry Ad Features Super PAC Footage*, POLITICO, Nov. 26, 2011  
11 (attached to MUGA's Response). The footage at issue consists of a Governor Perry handshake,  
12 a Governor Perry headshot partially framed by an American flag, and a second headshot. *See id.*  
13 MUGA does not dispute that the Committee's ad contains video footage drawn from MUGA's  
14 ad. *See* MUGA Response.

15 MUGA contends that its principals, vendors, and consultants were unaware that the  
16 Committee used the footage MUGA created until a journalist contacted MUGA after the  
17 Committee broadcast its ad. MUGA Resp. at 2; Miller Aff. ¶ 9. MUGA asserts further that  
18 every vendor or consultant to MUGA operated under strict rules not to have any communication  
19 with the Perry campaign, and that, in fact, no vendor or consultant had any such communication.  
20 Miller Aff. ¶¶ 11, 12, 14; Rials Aff. ¶¶ 7-9, 14.

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<sup>2</sup> Jason Miller attests that he is a partner in Jamestown Associates, Inc., a Republican political consulting firm, and that Jamestown was involved in producing the MUGA ad at issue.

<sup>3</sup> Scott Rials attests that he was the Executive Director of MUGA, and that Miller served as Communications Director.

**B. Legal Analysis**

The complaint asserts that MUGA's conveyance of the video footage to the Committee constituted an excessive or prohibited contribution because MUGA provided the footage either without charge or at less than the normal rate for such footage. Comp. ¶ 2; *see* 2 U.S.C. § 431(8)(A)(i). In supporting its allegation, the complaint cites Advisory Op. 2010-11 (Commonsense Ten) for the proposition that an independent expenditure-only group is prohibited from making contributions, "whether direct, in-kind, or via coordinated communication, to federal candidates or committees." Advisory Op. 2010-11 at 2-3.<sup>4</sup>

The complaint and attached sources conclude that MUGA gave video footage to the Committee because the Committee's ad contained some of the same footage that aired in MUGA's ad. MUGA denies that it gave video footage to the Committee or otherwise coordinated with the Committee.

Here, the footage at issue was a minimal part of the advertisement (less than ten seconds of the Committee's almost three-minute-long advertisement) and was used as an incidental part of the advertisement. Given the facts presented in this matter, the Commission exercises its prosecutorial discretion and dismisses the complaint that Make Us Great Again and Paul Kilgore in his official capacity as Treasurer, violated 2 U.S.C. § 441a(a) by making an unlawful contribution.

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<sup>4</sup> An independent expenditure-only committee can make contributions, subject to the statutory source and amount limits, to federal candidates if the committee maintains a separate bank account. *See FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011). The Commission does not know whether MUGA maintains such a separate contribution account.

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** RickPerry.org, Inc. and MUR: 6514  
Salvatore Purpura in his official capacity  
as Treasurer

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Campaign Legal Center and Democracy 21. See 2 U.S.C. § 437g(a)(1). The complaint alleges that Make Us Great Again, Inc. and Paul Kilgore in his official capacity as Treasurer ("MUGA"), an independent expenditure-only political committee, gave video footage to RickPerry.org and Salvatore Purpura in his official capacity as Treasurer (the "Committee"), that the Committee used in a television commercial. The Committee is the principal campaign committee of former presidential candidate Rick Perry. Citing Advisory Op. 2010-11 (Commonsense Ten), the complaint asserts that such a contribution violates the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations because independent expenditure-only committees are prohibited from making contributions to candidates. The complaint also alleges that the contribution is excessive because the video footage likely cost more than \$2,500.<sup>1</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

MUGA registered as an independent expenditure-only committee with the Commission on July 28, 2011. MUGA's purpose was to support and promote Governor Rick Perry's

<sup>1</sup> The complaint does not allege that there was unlawful coordination between MUGA and the Committee, and based on the available facts, there is no record evidence to suggest that there was any coordination relating to the video footage at issue. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21.

1 candidacy for President. MUGA paid camera crews to shoot footage of Governor Perry at public  
2 events, which was used in certain MUGA ads, including the 31-second ad entitled  
3 “Conservative” at issue. Jamestown Associates, Inc., a political consulting firm, obtained and  
4 created the footage for the MUGA ad at issue, which appears to have been distributed in early  
5 November 2011. *See Ben Smith, MUGA’s Great-Looking Ad, POLITICO, Nov. 3, 2011.*

6 The Committee incorporated the MUGA footage from “Conservative” in its two-minute,  
7 45-second-long ad entitled “Securing the American Dream (Marcus’ [sic] Story).” The  
8 Committee’s ad reportedly was distributed in late November 2011, around Thanksgiving. *See*  
9 *Ben Smith, Perry Ad Features Super PAC Footage, POLITICO, Nov. 26, 2011.* The less than 10  
10 seconds of footage at issue consists of a Governor Perry handshake, a Governor Perry headshot  
11 partially framed by an American flag, and a second headshot. *See id.* The Committee does not  
12 dispute that its ad contains video footage drawn from MUGA’s ad. *See Committee Response.*

13 The Committee asserts that its advertisement was created in-house by Committee  
14 employees “without ANY consultation, coordination, or discussion with any other political  
15 entity, specifically [MUGA].” *Committee Resp. at 1* (uppercase in original). The Committee  
16 claims that it obtained the video footage that is the subject of the complaint from YouTube, and  
17 that the footage was uploaded to the site by someone unknown to the Committee. *Id. at 2.*

#### 18 B. Legal Analysis

19 The complaint asserts that MUGA’s conveyance of the video footage to the Committee  
20 constituted an excessive or prohibited contribution because MUGA provided the footage either  
21 without charge or at less than the normal rate for such footage. *Compl. ¶ 2; see 2 U.S.C.*  
22 *§ 431(8)(A)(i).* In supporting its allegation, the complaint cites *Advisory Op. 2010-11*  
23 *(Commonsense Ten)* for the proposition that an independent expenditure-only group is

1 prohibited from making contributions, “whether direct, in-kind, or via coordinated  
2 communication, to federal candidates or committees.” Advisory Op. 2010-11 at 2-3.<sup>2</sup>

3 The complaint and attached sources conclude that MUGA gave video footage to the  
4 Committee because the Committee’s ad contained some of the same footage that aired in  
5 MUGA’s ad. The Committee denies that MUGA gave video footage to the Committee or  
6 otherwise coordinated with MUGA.

7 Here, the footage at issue was a minimal part of the advertisement (less than ten seconds  
8 of the Committee’s almost three-minute-long advertisement) and was used as an incidental part  
9 of the advertisement. Given the facts presented in this matter, the Commission exercises its  
10 prosecutorial discretion and dismisses the complaint that RickPerry.org, Inc. and Salvatore  
11 Purpura in his official capacity as Treasurer violated 2 U.S.C. § 441a(f) by accepting an unlawful  
12 contribution. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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<sup>2</sup> An independent expenditure-only committee can make contributions, subject to the statutory source and amount limits, to federal candidates if the committee maintains a separate bank account. *See FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011). The Commission does not know whether MUGA maintains such a separate contribution account.

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